

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application by Verizon New Jersey)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	CC Docket No. 01-347
NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc. and)	
Verizon Select Services, Inc. for)	
Authorization to Provide In-Region,)	
InterLATA Services in New Jersey)	

DECLARATION OF BLOSSOM A. PERETZ, ESQ.

Background and Purpose

Blossom A. Peretz, of legal age, declares and states as follows:

1. My name is Blossom A. Peretz. I am the Director of the Division of the Ratepayer Advocate for the State of New Jersey. As Director of the Division of the Ratepayer Advocate, I represent and protect the economic interests of all New Jersey ratepayers — residential, small business, commercial and industrial – in all policy matters, including rate issues, that will affect the provision of telecommunications, energy, water and wastewater services. My primary mission is to make sure that all classes of utility consumers receive safe, adequate and proper service at affordable rates that are just and nondiscriminatory, including affordable access to new technologies. Moreover, as Director of the Ratepayer Advocate’s office, I work to ensure that all New Jersey consumers are provided with choice of energy and telecommunications providers, and that they are knowledgeable about the choices they have in the emerging age of utility competition.

2. The Ratepayer Advocate's office was established in 1994 by Governor Christine Todd Whitman's reorganization plan. The Ratepayer Advocate is a party to every proceeding in the State of New Jersey in which utilities seek to alter their rates or services. In each case, the Ratepayer Advocate thoroughly investigates all aspects of the utility's request. The investigation is based on detailed information that the utility provides regarding its request for changes in service or rate increases, and is frequently accompanied by an exchange of additional information that the parties to the particular proceeding feel pertinent. The Ratepayer Advocate's attorneys, along with consulting economists, accountants, and engineers, analyze that information and develop independent conclusions regarding the reasonableness of the utility's request and prepare and file testimony to support those conclusions and protect ratepayers' interests. Later, as a party to evidentiary hearings, the Ratepayer Advocate generally cross-examines the utility's witnesses and submits evidence to support the Ratepayer Advocate's position.

3. Before becoming Director of the Ratepayer Advocate, I served as Secretary of the Board of Public Utilities (the "Board" or "BPU") and among other responsibilities supervised the BPU's Bureau of Customer Assistance, which handles individual ratepayer complaints regarding utility bills and services.

4. Prior to my positions at the BPU, I served as deputy attorney general for the State of New Jersey with the Division of Law, counseling the Board on legal matters and litigating a number of cases involving protection of consumers' rights to safe, adequate and reliable utility service.

5. I earned my undergraduate degree from Wellesley College and my law degree from Yale Law School.

6. This declaration focuses on the lack of competition in New Jersey's residential local exchange market and additional reasoning behind the Ratepayer Advocate's recommendation against approval of Verizon-New Jersey's ("Verizon-NJ's") section 271 application at this time. In addition to my statements on the lack of competition in New Jersey, in this declaration I am sponsoring certain documents supporting these statements (see below). I also hereby verify the accuracy of the public documents contained in Attachments 18, 21 and 22 to the Ratepayer Advocate's Comments in Opposition, all of which are public documents before the Board. Attachments 18 and 21 consist of Board transcripts. Attachment 22 is a letter submitted by AARP New Jersey to the Board opposing Verizon-NJ's section 271 on state universal service grounds.

There is no Competition in the Residential Local Exchange Market in New Jersey

7. In its section 271 filing to the Board, Verizon-NJ asserted that competitors served approximately 680 residential customers. Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in New Jersey ("Application"), App. B, Tab 1, Part A, Declaration of Dennis M. Bone ¶ 8. In that proceeding, Verizon-NJ failed to provide evidence supporting this number. In fact, the evidence at the state level demonstrated that none of the CLECs questioned as to the matter by Verizon-NJ were offering facilities-based residential service in competition with Verizon-NJ. Attachment 12.

8. In its application to the Commission, Verizon-NJ, for the first time, asserts that competitors serve "approximately 850 residential lines over their own facilities (including platforms)." Application at 8. Verizon-NJ does not provide any explanation for the sudden

surge in the number of facilities-based residential lines served by competitors. Moreover, Verizon-NJ fails to provide any explanation as to why it did not supplement the record before the Board regarding these “new” numbers.

9. This failure to supplement the record in the state proceeding is particularly troubling to me because Verizon-NJ now relies on different competitive carriers to attempt to show the presence of residential facilities-based (including UNE-P) competition in its federal Application than it did in its state filing. In the instant Application before the FCC, Verizon-NJ claims that the following four carriers are providing residential facilities-based services: Broadview Communications, eLEC Communications, Network Plus and MetTel. Application at 7-10. Yet, Verizon-NJ gave scant, if any, mention to eLEC, Network Plus or MetTel in the state proceeding. Moreover, while Verizon-NJ claimed that AT&T was providing UNE-P services to residential consumers in the state proceeding, Application, App. B, Tab 1, Bone Decl. ¶11, AT&T is not listed among the four providers allegedly providing residential services in Verizon-NJ’s Application.

10. Because Verizon-NJ is now introducing new numbers, neither the Ratepayer Advocate nor any other party in the state proceeding has had any opportunity to submit discovery requests to or to cross-examine Verizon-NJ on this information. Moreover, evidence was not presented in the hearings before the Board on Verizon-NJ’s current claims. Thus, the Board never had a record before it on the basis of which it could evaluate Verizon-NJ’s current claims on the existence of residential facilities-based competition.

11. Similarly, evidence from the proceeding before the Board also raises serious questions as to the accuracy of Verizon-NJ’s numbers. For example, Verizon-NJ did not know whether any of the alleged 680 residential CLEC lines represented actual paying consumers, or

whether they all represent CLEC employees or other test customers. In fact, Verizon-NJ President Mr. Dennis Bone admitted that he did not know whether any of the alleged UNE loops or UNE-P loops were being provided by competitors on a commercial basis. Application, App. B, Tab11, BPU 11/20/01 Hearing Transcript (Redacted), T.1431:2-7, 15-23, 1432:3-6.

12. Moreover, according to Verizon-NJ's response to data requests from the Ratepayer Advocate (RPA-VNJ 112, 131), included as Attachment 13 to our Comments, competitors operating in New Jersey have far fewer standalone and UNE-P loops and UNE-P switching ports than competitors in the other Verizon states in which in-region, interLATA authority has been granted.

13. If competitive carriers in New Jersey provide residential service in competition with Verizon-NJ (and, to the best of my knowledge, they do not), they do so on an order of magnitude significantly less than in every state, including New York, in which Verizon has received section 271 approval. Competitors in New Jersey thus will face even more severe wholesale provisioning problems with Verizon-NJ than competitors did in New York after Verizon-NY was granted long distance authority in that state.

Verizon-NJ's OSS Systems Have Not Been Commercially Tested

14. Verizon-NJ has not subjected its Operations Support Systems to commercial testing. Rather, Verizon-NJ relies exclusively on KPMG's OSS testing results. These tests were conducted in an artificial environment not subject to the pressures that a commercial environment would provide. The risk of OSS failure, as occurred in New York, is therefore even greater in New Jersey. The lack of commercial testing in New Jersey stands in stark contrast to other Verizon jurisdictions, such as New York and Pennsylvania, where commercial testing of OSS was completed before Verizon's 271 applications were approved.

15. Indeed, the need for commercial testing was recently highlighted to the Board. On December 21, 2001, AT&T informed the Board that Verizon-NJ had failed, for the past 17 months, to include five of six New Jersey area codes in specific performance metrics related to provisioning. Attachment 14. Importantly, KPMG did not recognize this error in its testing. Such unreliable performance reporting highlights the absolute need for robust commercial testing. It also directly contradicts Verizon-NJ's claims of nondiscriminatory access to OSS and places in doubt regulators' abilities to prevent backsliding by Verizon-NJ.

There Has Been No Experience with the New UNE Rates

16. The Board recently established new UNE rates on December 17, 2001. Verizon-NJ has yet to fully implement these rates. *See* Attachment 17. In my experience, a regulator can only judge nondiscriminatory access to UNEs through experience with the new UNE rates by competitors and consumers. There has not yet been time for such experience to be gained. Indeed, if anything, evidence since the Board's December 17, 2001 Order raises the concern that Verizon-NJ has failed to comply with the Board's UNE Order. Attachments 15, 16. In fact, Verizon-NJ told the BPU on January 10, 2002, that Verizon-NJ is still working to implement the BPU's UNE Order and that the new rates "will likely not be reflected until the first or second bill after the software implementation is completed." Letter from Bruce D. Cohen, Verizon-NJ, to Henry Odgen, Acting Secretary, BPU, Jan. 10, 2002 (Attachment 19); *see also* Attachment 17.

Competition in the Local Exchange Market is Critical to Protecting the Public Interest

17. The Ratepayer Advocate is committed to the principle that local competition is critical to protecting the public interest. Until consumers have access to effective competition in local services, Verizon-NJ will have the opportunity and incentive to use its market power to the detriment of New Jersey ratepayers through increased prices and lower service quality. *See*

Attachment 5. Absent the incentive provided by section 271, only effective competition will give Verizon-NJ the proper incentives to lower prices and increase service quality and innovation to the benefit of New Jersey ratepayers.

18. To date, however and as explained above, competition has not developed in New Jersey. *See* Attachments 2, 7, 9, 20. And with the recent bankruptcies of several CLECs, there are fewer carriers left to foster such competition. *See* Attachments 10, 11. Statements from Verizon's co-CEO Ivan Seidenberg calling "this whole scheme of CLEC interconnection a joke" give me great concern that Verizon-NJ ever intends to open its local markets to competition. James K. Glassman, Op-Ed, *Verizon Exploited a National Tragedy*, THE WASHINGTON TIMES, Oct. 23, 2001 at A19 (Attachment 4); *see also* Attachments 3, 5. Without the necessary constraint of competitive pressures, significant numbers of New Jersey ratepayers will likely be harmed by a grant of section 271 authority. *See* Attachments 2, 7, 9.

Structural Separation is Necessary to Protect the Public Interest

19. The Commission should make structural separation of Verizon-NJ's wholesale and retail business units a condition of any grant of section 271 authority. If competition and consumers are to have a chance once Verizon-NJ can again offer a full array of long distance service together with its monopoly service, the Commission should do all it can to diminish Verizon-NJ's incentive and ability to retard competition and discriminate against its retail competitors. I fear that any course other than structural separation will rapidly recreate the monopolistic conditions that prevailed before the Bell System divestiture. I fully subscribe to the views expressed by Edythe S. Miller, former chair of the Colorado Public Utilities Commission, who stated:

An additional step is required, at least when it comes to traditional utilities: the separation of competitive from network services, preferably in independent

companies, but at a minimum structurally separated units. In the absence of such a requirement, the potential for abuse remains

Edythe S. Miller, The Impact of Technological Change on Market Power and Market Failure in Telecommunications, Journal of Economic Issues (June 1, 2001) (Attachment 23).

20. As Ms Miller indicated, the ideal approach to structural separation would be full structural separation, with separate, completely independent corporations within Verizon, Inc., handling Verizon-NJ's retail and wholesale operations. These corporations would not share employees, assets or information, and the wholesale corporation would treat its retail operation in exactly the same way as other retail competitors.

21. As alternative approach that could achieve many of the benefits of full structural separation is functional/structural separation accomplished through a strong code of conduct and accounting requirements. I have seen this approach work in the deregulation of New Jersey's energy market. There, the Legislature has applied a strong code of conduct to the state's electric and gas utilities in the Electric Discount and Energy Competition Act, 1999 N.J. Laws 23 ("EDECA"). The New Jersey Board has significant experience with this approach through its activities under the EDECA and in implementing similar codes as part of its merger enforcement.

22. I urge the Commission to strongly consider one of these two measures. The dismal state of competition in New Jersey calls for strong measures, in the form of structural separation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 14, 2002

Blossom A. Peretz, Esq.